4069

BILL NO. S-78-05-34

SPECIAL ORDINANCE NO. S-87-78

AN ORDINANCE approving an Agreement with Woodmont Realty, Inc., for construction of a sanitary sewer.

NOW THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated May 12, 1978, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and Woodmont Realty, Inc., for:

SANITARY SEWER

Line A - Beginning at an existing manhole #1 over an existing 10" sanitary sewer, said manhole being situated on the right-of-way of Hickory Tree Road approximately 30 feet North of the South property line of Lot #109 in Woodmont, Section 5; thence Easterly, along the North right-of-way of Lakewood Court, a distance of 400 feet to proposed manhole #2; thence Easterly, 170 feet terminating at proposed manhole #3, said manhole being situated on the corner of Lots #101 and #102 in Woodmont, Section 5, and the right-of-way of said Lakewood Court.

Line B - Beginning at an existing manhole #4 over an existing 8" sanitary sewer, said manhole being situated 20 (plus or minus) feet South and 20 (plus or minus) feet West of the centerline intersection of Hickory Tree Road and Oak Tree Road in Woodmont, Section 3; thence Northeasterly, a distance of 205 feet to a proposed manhole #5, said manhole being situated 5 (plus or minus) feet West of the West property line of Lot #96 in Woodmont, Section 5, and on the South right-of-way line of Oak Tree Court; thence Northeasterly, a distance of 250 feet to a proposed manhole #6; thence Northeasterly, along the North right-of-way of Oak Tree Court, a distance of 350 feet to a proposed manhole #7; thence Northeasterly 240 feet terminating at a proposed manhole #8, said manhole being situated on the corner of Lots #89 and #90 in Woodmont, Section 5, and the right-of-way of Oak Tree Court.

Line C - Beginning at an existing manhole #9 over an existing 8" sanitary sewer, said manhole being situated 30 (plus or minus) feet West and 20 (plus or minus) feet South of the centerline intersection of Hickory Tree Road and Rollingwood Lane; thence Northeasterly along the South right-of-way line of said Rollingwood Lane, a distance of 160 feet to

a proposed manhole #10; thence Easterly, 260 feet terminating at a proposed manhole #11, said manhole being situated on the corner of Lots #79 and #80 in Woodmont, Section 5, and the right-of-way of said Rollingwood Lane.

of which the developer shall pay the entire cost and expense of the construction of said sewer, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Councilman

APPROVED AS TO FORM AND LEGALITY,

CITY ATTORNEY

Read the first time in full and on motion by Nuckols, seconded by Hunter, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ o'clock ____ M., E.S.T.

DATE: 5-23-78 Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Stier, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	8			1	
BURNS	✓				
HINGA	✓				
HUNTER	✓				
MOSES	✓				
NUCKOLS				✓	
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
STIER	✓				
TALARICO	✓				

DATE: 6-13-78 Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (~~GENERAL~~) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. S-87-78 on the 13th day of June, 19 78

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of June, 19 78, at the hour of 11:00 o'clock A.M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 20th day of June, 19 78, at the hour of 8:30 o'clock A M., E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-05-34

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving an Agreement with Woodmont Realty, Inc., for construction of a sanitary sewer

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance do PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

6-13-78 CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY CLERK

Memorandum

To BOARD OF PUBLIC WORKS Date 4/26/78

From PHILIP R. BOLLER

Subject SEWER EXTENSION AGREEMENT - WOODMONT, SECTION V

COPIES TO:

Attached for your and councilmanic approval is Sewer Extension Agreement for subject addition.

Once this have been approved please return to this office for recording. Also please issue a board order.

Philip R. Boller, P.E.
Chief Water Pollution Control Engineer

PRB/DE/iw
Att.

BOARD OF PUBLIC WORKS
APR 27 1978
RECEIVED

NOTED
J.P.V.
E.H.L.
M.G.S.
Date

66-8-3 H.T.
5/12/78

Council
5/23/78

66-8-3 H.I.
5/12/78

AGREEMENT
FOR
SEWER EXTENSION

THIS AGREEMENT made in triplicate this 12 day of May, 1978, by and between WOODMONT REALTY, INC., hereinafter referred to as "Developer" and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "City", WITNESSETH:

WHEREAS, the Developer desires to construct a sanitary sewer described as follows:

WOODMONT - SECTION 5

Line A - Beginning at an existing manhole #1 over an existing 10" sanitary sewer, said manhole being situated on the right-of-way of Hickory Tree Road approximately 30 feet North of the South property line of Lot #109 in WOODMONT, SECTION 5; thence Easterly, along the North right-of-way of Lakewood Court, a distance of 400 feet to proposed manhole #2; thence Easterly, 170 feet terminating at proposed manhole #3, said manhole being situated on the corner of Lots #101 and #102 in WOODMONT, SECTION 5, and the right-of-way of said Lakewood Court.

Line B - Beginning at an existing manhole #4 over an existing 8" sanitary sewer, said manhole being situated 20 (plus or minus) feet South and 20 (plus or minus) feet West of the centerline intersection of Hickory Tree Road and Oak Tree Road in WOODMONT, SECTION 3; thence Northeasterly, a distance of 205 feet to a proposed manhole #5, said manhole being situated 5 (plus or minus) feet West of the West property line of Lot #96 in WOODMONT, SECTION 5, and on the South right-of-way line of Oak Tree Court; thence Northeasterly, a distance of 250 feet to a proposed manhole #6; thence Northeasterly, along the North right-of-way of Oak Tree Court, a distance of 350 feet to a proposed manhole #7; thence Northeasterly 240 feet terminating at a proposed manhole #8, said manhole being situated on the corner of Lots #89 and #90 in WOODMONT, SECTION 5, and the right-of-way of Oak Tree Court.

Line C - Beginning at an existing manhole #9 over an existing 8" sanitary sewer, said manhole being situated 30 (plus or minus) feet West and 20 (plus or minus) feet South of the centerline intersection of Hickory Tree Road and Rollingwood Lane; thence Northeasterly along the South right-of-way line of said Rollingwood Lane, a distance of 160 feet to a proposed manhole #10; thence Easterly, 260 feet terminating at a proposed manhole #11, said manhole being situated on the corner of Lots #79 and #80 in WOODMONT, SECTION 5, and the right-of-way of said Rollingwood Lane.

All sewers consist of 2035 ± L.F. of 8-inch E.S.C.P., ABS Plastic Pipe or A.C.P. in accordance with plans, specifications and profiles heretofore submitted to the City and now on file in the Office of the Chief Water Pollution Control Engineer of the City Utilities of the City, and known as WOODMONT, SECTION 5, which plans, specifications and profiles are by reference incorporated herein and made a part hereof, which sewer will serve not only land in which the Developer has an interest, but also adjoining land areas.

WHEREAS, the entire cost of construction of said sewer is to be paid for by the Developer.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER.

The Developer shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the City, under private contract to be let within sixty (60) days after requisite City approval. All work and materials shall be subject to inspection by City and the right of City to halt construction if there shall be noncompliance therewith. Said sewer shall not be deemed permanently connected into the sewer system of City until final acceptance by City. Upon completion, said sewer shall become the property of City and City shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be borne by City.

2. COST OF CONSTRUCTION.

The Developer agrees to pay the entire cost and expense of construction of said sewer, in cash, including engineering and City inspection fees, and to hold the City harmless from any liability for claims connected therewith.

3. AREA OF DEVELOPER.

Said sewer, when accepted by the City will serve the following described real estate, to be platted as WOODMONT, SECTION 5.

WOODMONT - SECTION 5

Part of the Fractional Southeast Quarter of Section 32, together with part of the West Half of the Fractional Southwest Quarter of Section 33, all in Township 32 North, Range 12 East, Allen County, Indiana, and all being more particularly described as follows, to wit:

Beginning at the West Quarter corner of said Section 33; thence S 89°-45' E, on and along the North line of said Fractional Southwest Quarter, a distance of 1000.5 feet to the West right-of-way line of the New York Central Railroad (formerly the Fort Wayne, Jackson and Saginaw Railroad); thence Southerly, on and along said West right-of-way line, as defined by the arc of a regular curve to the left having a radius of 6644.67 feet, an arc distance of 143.77 feet (the chord of which bears S 00°-04'-20" W, for a length of 143.77 feet) to the point of tangency; thence S 00°-41'-30" E, continuing along said West right-of-way line and tangent to the point of tangency; thence S 00°-41'-30" E, continuing along said West right-of-way line and tangent to said curve, a distance of 1435.25 feet to a point situated 995.55 feet, N 00°-41'-30" W from the point of intersection of said West right-of-way line with the South line of said Fractional Southwest Quarter, said point being the Northeast corner of WOODMONT, SECTION 4, as recorded in Plat Book 40, Pages 84-86 in in Office of the Recorder of Allen County, Indiana; thence Westerly, on and along the Northerly boundary of said WOODMONT, SECTION 4, as follows:

S 89°-31' W, a distance of 76.3 feet; thence
N 77°-30' W, a distance of 200.0 feet; thence
S 84°-00' W, a distance of 175.0 feet; thence
S 54°-00' W, a distance of 80.0 feet; thence
S 62°-04' W, a distance of 95.3 feet; thence
S 86°-00' W, a distance of 200.0 feet; thence
Northerly, on and along the arc of a regular curve to the right having a radius of 641.01 feet, a distance of 45.0 feet (the chord of which bears N 00°-01' W, for a length of 44.99 feet) to the point of tangency; thence N 02°-00' E and tangent to said curve, a distance of 44.15 feet; thence N 88°-00' W, a distance of 228.8 feet to the Northwest corner of Lot #62 in said WOODMONT, SECTION 4, being a point on the Easterly line of Lot #30 in WOODMONT, SECTION 2, as recorded in Plat Book 38, Pages 117 to 119 in the Office of the Recorder of Allen County, Indiana;

thence N 00°-00' W, on and along the Easterly line of said Lot #30 and the Easterly line of Lot #31 in said WOODMONT, SECTION 2, a distance of 185.0 feet to the Southeast corner of Lot #32 in said WOODMONT, SECTION 2; thence N 12°-00' W, on and along the Easterly line of said Lot #32, a distance of 190.0 feet to the Southeast corner of Lot #33 in said WOODMONT, SECTION 2; thence N 14°-30' W, on and along the Easterly line of said Lot #33, a distance of 253.05 feet to the Southerly right-of-way line of Oaktree Road; thence Northeasterly, on and along said Southerly right-of-way line, as defined by the arc of a regular curve to the right having a radius of 249.04 feet, a distance of 30.0 feet (the chord of which bears N 77°-04' E, for a length of 29.98 feet) to the point of tangency; thence N 80°-31' E, continuing along said Southerly right-of-way line and tangent to said curve, a distance of 182.46 feet to the point of intersection of said Southerly right-of-way line with the Easterly right-of-way line of Hickory Tree Road; thence N 06°-29' W, on and along said Easterly right-of-way line, a distance of 368.73 feet to the point of curvature of a regular curve to the left having a radius of 319.33 feet; thence Northwesterly, on and along the arc of said curve and continuing along said

said Easterly right-of-way line, a distance of 209.0 feet (the chord of which bears N 25°-14' W, for a length of 205.29 feet) to the point of tangency; thence N 43°-59' W, continuing along said Easterly right-of-way line and tangent to said curve, a distance of 125.0 feet to the point of curvature of a regular curve to the right having a radius of 348.67 feet; thence Northwesterly, continuing along said Easterly right-of-way line, as defined by the arc of said curve, a distance of 162.56 feet (the chord of which bears N 30°-37'-30" W, for a length of 161.09 feet) to the Southwest corner of Lot #53 in WOODMONT, SECTION 3, as recorded in Plat Book 40, Pages 72-75 and re-recorded in Plat Book 40, Pages 94-97 in the Office of the Recorder of Allen County, Indiana; thence N 67°-56' E, on and along the Southerly line of said Lot #53, a distance of 211.0 feet to the Southeast corner of said Lot #53; thence N 00°-21'-30" W, on and along the East line of said Lot #53, a distance of 55.0 feet to the point of beginning, containing 37.289 acres of land.

As the Developer will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in, inspection fees and monthly sewage treatment charges as are customarily charged by the City for connections to City sewer mains and treatment of sewage therefrom.

4. CHARGE AGAINST AREA.

An area connection charge of $475.00 per acre must be paid to the City at the time of connection. This area connection charge represents the oversizing cost expended by the City for the sanitary sewer, St. Joe Interceptor, that provides service to WOODMONT, SECTION 5.

5. BOND

This contract is subject to Developer furnishing a satisfactory Performance and Guaranty Bond for the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the City.

6. LIMITATION ON USE.

Said sewer shall be constructed for disposal of sanitary sewage only, and neither the parties hereto, their successors, or assigns

or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION.

The Developer, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In further consideration and to induce City to execute and ratify this contract, said Developer, for himself, his successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described in Article 3 herein.

Developer further agrees that any deeds, contracts, or other instruments of conveyance made by the Developer, its successors or assigns, transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the Developer, his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

The Developer further agrees to record any executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their, or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or of the territory in which it is located or of the area served by said sewer.

8. GOVERNING STATUTE.

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17 and I.C. 19-2-7-18), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

9. COUNCILMANIC APPROVAL.

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) dyas after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

ATTEST:

Dwight Graber, Corporate Secretary

WOODMONT REALTY, INC.

By: Robert L. Meister

Robert L. Meister, President
"DEVELOPER"

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert L. Meister, President and Dwight Graber, Corporate Secretary of WOODMONT REALTY, INC. who acknowledged the execution of the foregoing agreement for sewer extension as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 21 day of April, 1978.

Edna Jean McGarity, Notary Public

My Commission Expires:

Sept. 10, 1979

Resident of Allen County, Indiana.

CITY OF FORT WAYNE, INDIANA

By: Robert E. Armstrong
Robert E. Armstrong, Mayor

BOARD OF PUBLIC WORKS

By: Henry P. Wehrenberg
Henry P. Wehrenberg, Chairman

By: Ethel H. LaMar
Ethel H. LaMar, Member

By: Max G Scott
Max G Scott, Member

Approved as to form and legality:

Associate City Attorney

ATTEST:

Ursula Miller (SEAL)
Ursula Miller, Clerk

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State personally appeared Robert E. Armstrong, Mayor, and Henry P. Wehrenberg, Chairman, and Ethel H. LaMar and Max G Scott, Members, of the Board of Works, and Ursula Miller, Clerk of Board of Works of the City of Fort Wayne, Indiana, and acknowledged the foregoing document to be the free and voluntary act and deed of said City and their free and voluntary acts and deeds, respectively, as such officers of said City.

WITNESS my hand and notarial seal this 12 day of May, 1978.

Anne J. Fox
Anne J. Fox, Notary Public
Resident of Allen County, Indiana

My Commission Expires:

March 6, 1980

This Instrument prepared by: William D. Swift

4069

TITLE OF ORDINANCE SPECIAL ORDINANCE - SEWER EXTENSION AGREEMENT FOR WOODMONT, SECTION V

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-78-05-34

SYNOPSIS OF ORDINANCE SEWER EXTENSION AGREEMENT FOR WOODMONT, SECTION V - WOODMONT REALTY, INC., DEVELOPER, FOR THE INSTALLATION OF A SANITARY SEWER TO SERVE SECTION V OF THE WOODMONT REAL ESTATE DESCRIBED THEREIN.

(AGREEMENT FOR SEWER EXTENSION ATTACHED)

EFFECT OF PASSAGE CONSTRUCTION OF SANITARY SEWER FOR WOODMONT, SECTION V

EFFECT OF NON-PASSAGE INABILITY TO PROCEED WITH CONSTRUCTION

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER TO PAY ENTIRE COST AND EXPENSE OF CONSTRUCTION OF SAID SEWER

ASSIGNED TO COMMITTEE

EP